

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

IN RE:

DAVID G. WALLACE, JR.,

DEBTOR

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§

CASE NO. 15-31594-H4-7

**BIZRADIO NOTEHOLDERS' EMERGENCY MOTION TO LIFT STAY TO SEEK  
RELIEF AND CLARIFICATION OF JUDGE ATLAS'S ORDER APPROVING  
SETTLEMENT AND ENTERING FINAL BAR ORDER AND INJUNCTION IN  
FEDERAL DISTRICT COURT ACTION**

TO THE HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE:

THIS IS A MOTION FROM RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THE COURT HAS SET A HEARING ON THIS MATTER ON JUNE 9, 2015 AT 9:30 A.M. IN COURTROOM 600, UNITED STATES COURTHOUSE, 515 RUSK, 6<sup>TH</sup> FLOOR, HOUSTON, TEXAS 77002.

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EXPEDITED BASIS, THEN YOU WILL HAVE LESS TIME TO RESPOND. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.**

The BusinessRadio Note Holders set forth in Exhibit A attached hereto ("BusinessRadio Noteholders" or "Movants") file this Emergency Motion to Lift Stay To Seek Relief and Clarification of Judge Atlas's Order Approving Settlement and Entering Final Bar Order and Injunction entered on August 1, 2012 in Civil Action No. 4:09-cv-03674 in the United States

District Court for the Southern District of Texas, Houston Division and would respectfully show unto the Court as follows:

I. Jurisdiction

1. This Court has jurisdiction over this Motion under 28 USC section 1334 and 157(b)(2)(A) and (G). This matter is a core proceeding.

II. Factual Background

2. On March 24, 2015, David G. Wallace, Jr. filed for protection under chapter 7 of title 11 United States Code. Rodney Tow has been appointed Chapter 7 Trustee.

3. The BusinessRadio Note Holders were enticed by the Debtor to make loans to one of the companies he controlled, Wallace Bajjali Development Partners, LLC ("WBDP"), which in turn made loans, as agent for the Business Radio Note Holders, to one or more Business Radio entities. The Debtor undertook responsibility to handle the loans and to obtain security agreements and perfect security interests on the BusinessRadio Note Holders' behalves. The Debtor and WBDP failed to document the loans properly and failed to perfect the security interests. As a result, the BusinessRadio Note Holders were unable to obtain the assets of BizRadio or otherwise maintain their position as secured creditor. Additionally, the Debtor and WBDP made material misrepresentations of fact and failed to disclose material facts in order to induce the BusinessRadio Note Holders to make the loans at issue. The BusinessRadio Note Holders therefore have fraud claims against the Debtor relating to the transactions.

4. In 2012, the Receiver for BizRadio, Thomas Taylor, entered into settlement negotiations with the Debtor, Costa Bajjali, and several of their companies regarding the repayment of loans owed to the Receivership entities. As part of the settlement that was ultimately reached, the Debtor, Costa Bajjali, and their companies agreed to pay the Receiver certain amounts. In return,

the Receiver released the Receivership's claims against the Wallace Bajjali parties, and obtained a Bar Order preventing the BusinessRadio Note Holders from pursuing any claims against the Wallace Bajjali parties relating to the BusinessRadio Notes.

5. On August 1, 2012, Judge Atlas entered that certain Order Approving Settlement and Entering Final Bar Order and Injunction, which provides:

“Any and all of the BusinessRadio Note Holders are hereby permanently barred, restrained, and enjoined, consistent with general equitable principles and in accordance with this Court's ancillary equitable jurisdiction in this matter, from commencing or continuing any judicial, administrative, arbitration, or other proceeding and/or asserting or prosecuting any claims and/or causes of action against any of the Wallace Bajjali Parties arising out of, in connection with, or relating in any way to the BusinessRadio Note Plan, the loans made to BusinessRadio or its related entities by the BusinessRadio Note Holders, and/or the notes issued by BusinessRadio or its related entities to the BusinessRadio Note Holders....

The Court shall have and retain jurisdiction over all matters related to the administration, interpretation, effectuation, or enforcement of the Order, the Compromise Settlement and Release Agreement between the Wallace Bajjali Parties and the Receiver, and any related disputes.”

5. The Order was affirmed by the Fifth Circuit in an unpublished opinion. A true and correct copy of the Bar Order is attached hereto as Exhibit “B” and incorporated herein for all purposes.

6. The basis upon which the Bar Order was agreed to and approved by the Court was that the BusinessRadio Note Holders would benefit as Receivership beneficiaries from the settlement. In late 2014, the Wallace Bajjali parties defaulted on the settlement agreement, and prior to the bankruptcy filing, the Receiver has asserted claims for breach of the settlement agreement against the Wallace Bajjali parties. The Receiver has not received any of the funds required under the settlement approved by Judge Atlas. Due to the language of the Bar Order, BusinessRadio Noteholders may be enjoined from asserting proofs of claim in the case or filing

discharge actions.

7. Because the Receivership will not receive the benefit of the settlement, and because the Wallace Bajjali parties defaulted on their obligations under the settlement agreement, the BusinessRadio Note Holders intend to ask the District Court to rescind or modify the Bar Order and authorize the BusinessRadio Note Holders to pursue their claims on the BusinessRadio Notes.

### III. Relief Requested

8. BusinessRadio Noteholders seek relief from the automatic stay in order to file pleadings and to obtain relief in the District Court action from the Bar Order to allow them to file proofs of claim in this bankruptcy case and to prosecute discharge actions.<sup>1</sup> The Bar Order itself indicates that it is subject to “general equitable principles”. The intent of the Bar Order was not to foreclose the BusinessRadio Noteholders right to have their debts excepted from discharge and to assert claims in the bankruptcy case.

9. 11 USC section 362 (d)(1) authorizes the Court to grant relief from the stay for cause. The BusinessRadio Note Holders submit that cause exists because their rights in the bankruptcy case may be cutoff if the Bar Order is not clarified to allow them to assert their claims and file discharge actions prior to the discharge deadline which is currently set for June 22, 2015, which is approximately one month away<sup>2</sup>. A balancing of the equities favors lifting the stay to allow this actions. The only party that will be harmed by not lifting the stay for this purpose are the innocent Noteholders who were defrauded by the Debtor who may have their rights inadvertently cutoff in this bankruptcy case by the Bar Order. The Debtor is not harmed nor is the Trustee by the

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<sup>1</sup> This Motion only seeks to modify the Bar Order as to this Debtor, David Wallace due to the impending discharge deadline of June 22, 2015. Movants are aware that several of the Wallace Bajjali parties that have obtained the benefit of the Bar Order from Judge Atlas have filed their own chapter 7 bankruptcy cases. Movants are not seeking any relief from the Bar Order against any of these other chapter 7 debtors, unless and until an Order is entered in the respective bankruptcy case which grants stay relief for this purpose.

<sup>2</sup> In the event Judge Atlas cannot hear or rule upon any motion filed for clarification/modification, Movants reserve their right to seek an extension of the 727 and 523 deadlines in this case until a final order is entered on any motion filed by Movants.

lifting of the stay. The Receiver is not harmed because he will be able to make his arguments in front of Judge Atlas on the issues. Under these circumstances, and the factors considered by bankruptcy courts that are applicable to this motion, the hardship to Movants greatly outweighs the hardship to the debtor or the bankruptcy estate by continuing the stay. *See In re Choice ATM Enters.* 2015 Bankr. LEXIS 689, \*10, \*11(Bankr. N.D. Tex. 2015). For these reasons, cause exists to lift the stay for this express purpose.

10. An emergency hearing is requested because the deadline to file a discharge action is June 22, 2015, which is approximately one month away. In this time frame, BusinessRadio Noteholders need to obtain an order lifting stay and file, brief and schedule hearings in front of Judge Atlas on seeking relief from the Bar Order. Movants request a hearing setting at a time acceptable to the Court prior to the June 22, 2015 deadline which allows them enough time to seek relief from Judge Atlas in the District Court Lawsuit. For these reasons, BusinessRadio Noteholders certify that an emergency exists which warrants a hearing on this Motion at the Court's earliest convenience.

WHEREFORE, PREMISES CONSIDERED, the BusinessRadio Note Holders set forth in Exhibit A attached hereto respectfully request that the Court set an emergency hearing and after hearing, enter an Order lifting the automatic stay in the case for the limited purpose of allowing the BusinessRadio Note Holders set forth in Exhibit A attached hereto to file pleadings and to obtain relief in the District Court action from the Bar Order to allow them to file proofs of claim in the bankruptcy case and to file and prosecute discharge actions against the Debtor for the reasons set forth herein and grant such other and further relief, at law and in equity, as is just.

Respectfully submitted,

/s/ C. Thomas Schmidt  
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NOTEHOLDERS ON EXHIBIT A

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**CERTIFICATE OF CONFERENCE**

The undersigned certifies that he contacted (a) the Receiver's counsel, Joseph Epstein on May 6, 2015 at 3:47 pm, and the Receiver, by email dated May 13, 2015, responded that he opposes the Motion; (b) the Debtor's counsel, Janet Casciato and the Chapter 7 Trustee's counsel, Kyung Lee and Charles Rubio by email on May 21, 2015 at approximately 3:45 pm. Ms Casciato indicated in a phone conference on May 22, 2015 at 11:00 am that an agreement could not be reached at this time. On May 22, 2015, at approximately 9:45 am and 10:45 am, counsel left voicemail messages with both Mr. Rubio and Mr. Lee respectively and have not heard back on the substance of the Motion, at the time of the filing.

/s/ Preston T. Towber

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Emergency Motion For Relief From Stay as to the BusinessRadio Note Holders has been served upon all parties listed on the attached Trustee's Master Service List either by postage paid United States mail or electronically by the Court on this 22nd day of May, 2015.

/s/ Preston T. Towber  
Preston T. Towber

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